



## APPENDIX

### **Inland Rules of Navigation**

**Article 19.** Crossing situation. Burdened vessel to keep out of the way when two steam vessels are crossing.

When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other (June 7, 1897, sec. 1-33 U. S. C. 204) (Navigation Laws of the United States, 1935, p. 255).

**Article 21.** Crossing situation. Privileged vessel to keep her course and speed.

Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed. (June 7, 1897, sec. 1-33 U. S. C. 206). [See arts. 27 and 29.] (Navigation Laws of the United States, 1935, p. 255).

**Article 22.** Burdened vessel avoid crossing ahead.

Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. (June 7, 1897, sec. 1-33 U. S. C. 207). (Navigation Laws of the United States, 1935, p. 255).

**Article 23.** Burdened vessel to slacken speed, stop or reverse.

Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed, or stop or reverse. (June 7, 1897, sec. 1-33 U. S. C. 208). (Navigation Laws of the United States, 1935, p. 255).

**Article 27.** General prudential rule.

In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger. (June 7, 1897, sec. 1-33 U. S. C. 212). (Navigation Laws of the United States, 1935, p. 256).

## Supervising Inspectors' Rules

**RULE II.** Steam vessels are forbidden to use what has become technically known among pilots as "CROSS SIGNALS", that is, answering one whistle with two, and answering two whistles with one.

**RULE III.** The *signals for passing*, by the blowing of the whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting "head and head", or nearly so, but at all times when the steam vessels are in sight of each other, when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port.

The whistle signals provided in the rules for steam vessels meeting, passing, or overtaking are never to be used except when steam vessels are in sight of each other, and the course and position of each can be determined in the daytime by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mists, falling snow, or heavy rain-storms, when vessels can not so see each other, fog signals only must be given.

**RULE VII.** When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse.

If from any cause the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary, until signals for passing with safety are made and understood.

AUG. 26 1940

CHARLES ELIOTT CROPLEY  
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1939

No. [redacted] 375 - 376

SOUTHERN PACIFIC COMPANY,

*Petitioner,*

*vs.*

Steamship EASTERN GLADE, etc.,  
POSTAL STEAMSHIP CORPORATION,

*Cross-petitioner.*

SOUTHERN PACIFIC COMPANY,

*Petitioner,*

*vs.*

POSTAL STEAMSHIP CORPORATION

*Respondent.*

APPLICATION FOR ORDER

CHAUNCEY L. CLARK

BUTTON H. WHITE

*Counsel for Petitioner*

BURLINGHAM, VEEDER, CLARK & HUPPES

27 William Street

New York City

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1939  
Nos. 73 AND 74

SOUTHERN PACIFIC COMPANY  
Petitioner  
vs.

Steamship *Eastern Glade*, etc.,  
POSTAL STEAMSHIP CORPORATION  
Claimant

SOUTHERN PACIFIC COMPANY  
Petitioner  
vs.

POSTAL STEAMSHIP CORPORATION  
Respondent

Your petitioner, Southern Pacific Company, respectfully presents this its application for an order granting it leave to use the certified transcript and copies of the printed record in the cases of the Postal Steamship Corporation against Steamship *El Isleo et al.*, and of the Postal Steamship Corporation against Southern Pacific Company, which were No. 73 and No. 74 on the calendar of this Court for the October Term, 1939, in connection with a petition for a writ of certiorari which is to be filed herewith, provided the said transcript and copies of the printed record are supplemented by the printing and insertion of all the proceedings had in these cases since the entry of the judgment of this Court on January 2, 1940.

Petitioner, in support of its motion, presents the following:

**Summary Statement of Matters  
Involved in the Cases**

These cases arise out of a collision in Baltimore harbor between petitioner's steamship *El Isleo* and respondent's steamship *Eastern Glade*.

The United States District Court for the Southern District of New York and the Circuit Court of Appeals for the Second Circuit held the *Eastern Glade* solely at fault for her failure to comply with Articles 19, 21, 22 and 23 of the Inland Rules of Navigation (33 U. S. C. 204, 206, 207 and 208) applying to vessels on crossing courses.

The owners of the *Eastern Glade* applied to this Court for certiorari, claiming that the *El Isleo* was at fault for failure to comply with Rules II and VII of the Rules of the Supervising Inspectors. The Inspectors' rules had, in a number of decisions, been held invalid when applied to vessels in crossing situations. This Court granted certiorari and rendered a decision holding only that the Inspectors' rules were valid but remanded the cases to the Circuit Court of Appeals for further action free from the supposed compulsion to follow the previous decisions treating the rules as invalid (308 U. S. 378). The Circuit Court of Appeals on the reargument, nevertheless, felt that it was bound by the decision of this Court and handed down its decision holding both vessels at fault (112 F. (2d) 297).

A petition for certiorari has been prepared for the purpose of showing this Court that the Circuit Court of Appeals decision resulted from a misinterpretation of the

decision of this Court and of the Inspectors' rules and that the rules, as so interpreted, are in conflict with Federal Statutes for the prevention of maritime collisions.

### **Reasons for Allowance of the Order**

1. The question raised by the recent decision is of such paramount importance as to require the decision of this Court.
2. The cases having been once before this Court, the record is available for the consideration of the petition when supplemented by the printing and insertion of all proceedings since the entry of the judgment of this Court on January 2, 1940. The additional expense of reprinting that portion of the record now available would be wholly unnecessary and serve no useful purpose.

Respectfully submitted,

CHAUNCEY I. CLARK  
BURTON H. WHITE  
Counsel for Petitioner.

Dated: August 16, 1940.



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FILED  
SEP 18 1940  
CHARLES ELMORE GROPLEY  
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1939

Nos. 73 AND 74

375 - 376

SOUTHERN PACIFIC COMPANY,  
Petitioner,  
vs.

STEAMSHIP EASTERN GLADE, etc.,  
POSTAL STEAMSHIP CORPORATION,  
Claimant.

SOUTHERN PACIFIC COMPANY,  
Petitioner,  
vs.

POSTAL STEAMSHIP CORPORATION,  
Respondent.

## MEMORANDUM FOR POSTAL STEAMSHIP CORPORATION, RESPONDENT.

If there is ambiguity in the petitioner's statement of the question presented, it is achieved by taking two words from Judge Learned Hand's opinion and understanding them to mean something that their context does not substantiate.

What Judge Learned Hand wrote,—the concluding sentences of the Circuit Court of Appeals' opinion,—was:

"Rule VII is explicit; it forbids any agreement other than an assent to the proposal, until after the

vessels have at least stopped their engines. They may not undertake to agree while they remain under way. That is what El Isleo did, because she supposed that it was her duty, as well as her privilege, to keep on. It is quite impossible to say that if she had stopped—her minimal duty—the collision would still have happened; the probabilities are the other way; and although it is true that, as between the two vessels the Eastern Glade was far more gravely at fault, we have no power to apportion the damages. Decree reversed; damages divided" (R. 294).

Petitioner seems to suppose that Judge Hand meant to say that the vessels must stop their *headway* before coming to an agreement. There are probably not many persons who would share the petitioner's supposition after reading the foregoing extract with the knowledge that Judge Learned Hand had written the opinion in *The Fulton* case, on the strength of which this court granted certiorari and reversed the Circuit Court of Appeals' former decision in this case (R. 303-311). Having heard the instant case twice, surely Judge Hand was familiar with the subject matter when he wrote the present opinion of the Circuit Court of Appeals, on reargument; and at most it would be idle to suggest that Judge Hand needs help with his English.

If there is no ambiguity in the petitioner's statement of the question presented, nothing new has been offered for this court's consideration.

As was pointed out when the case was here before (see Petitioner's Reply Brief, p. 5), the comma after the word "stopped" originally appeared in the Inspectors' Rules, but was omitted, evidently by inadvertence, from the editions after the one of July 25, 1911. The same language, with the original punctuation, has continued to be used in the Pilot Rules for the Great Lakes, Rule X of which corresponds with Rule VII of the Inland Pilot Rules, and

was quoted in full on pages 14 and 15 of the Petitioner's Brief, submitted by the present respondent when the case was before this court. Comma or no comma, it has always been plain enough that Rules II and VII would be worse than useless if the matter of stopping his engines before sounding cross signals were left optional with the pilot of the vessel first addressed.

Respectfully submitted,

JOHN C. CRAWLEY,  
EARLE FARWELL,  
for the Respondent.

New York, September 16, 1940.